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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Cellular Service and Other)
Commercial Mobile Radio Services)
in the Gulf of Mexico)

WT Docket No. 97-112

Amendment of Part 22 of the)
Commission's Rules to Provide)
for Filing and Processing)
of Applications for Unserved)
Areas in the Cellular Service)
and to Modify Other Cellular Rules)

CC Docket No. 90-6

To: The Commission

COMMENTS OF PETROLEUM COMMUNICATIONS, INC.

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SUMMARY

Petroleum Communications, Inc. ("PetroCom"), one of the two carriers licensed to provide cellular service in the Gulf of Mexico Service Area ("GMSA"), submits comments in response to the Commission's Second Further Notice of Proposed Rulemaking ["Second FNPR"] regarding new rules for cellular licensing for the GMSA.

Any new rules must accommodate existing rights of the current GMSA licensees, including PetroCom's timely filed and still pending application to expand its CGSA to include the eastern portion of the GMSA. PetroCom's application should be granted because it cannot be lawfully submitted in whole or part to a competitive bidding process. Further, a similar application was filed by PetroCom's competitor and granted, and PetroCom's application deserves similar treatment. Finally, the Administrative Procedure Act bars the Commission from retroactively applying new rules to PetroCom's application.

To accomodate PetroCom's rights, the GMSA should be divided into a Western Coastal Zone, Eastern Coastal Zone and Exclusive Zone. The Coastal Zones would extend 12 nautical miles from the GMSA Coast Line which would be defined by specific coordinates. The Exclusive Zone would extend beyond the Coastal Zones to the limits of the U.S. Exclusive Economic Zone proclaimed in 1983. Upon adoption of the new rules, PetroCom's Cellular Geographic Service Area ("CGSA") would be redefined to include that portion of the Exclusive Zone and Western Coastal Zone covered by its composite Service Area Boundaries ("SABs"). The current GMSA licensees would have exclusive licensing rights in the Exclusive Zone. The new rules would provide PetroCom with an additional exclusive 3-year build out period in the Eastern Coastal Zone. The current GMSA licensees would retain rights to recover areas in the Coastal Zones vacated due to movement of platforms.

A hybrid formula would apply to land-based sites of incumbent MSA and RSA licensees within 35 miles of the GMSA Coast Line. The SABs of such sites would be calculated using the GMSA formula contained in Section 22.911(a)(2). That portion of the SAB so calculated that does not extend into the GMSA could then be recalculated using the Section 22.911(a)(1) formula.

PetroCom proposes that GMSA licensees should have the right to deploy land-based transmitters to serve the GMSA under certain conditions. Likewise, land-based MSA and RSA licensees would have the right to deploy water-based facilities. PetroCom proposes specific rules for that purpose. Phase II applications should be accepted by the Commission only after the current GMSA licensees

have been given 18 months from the date the new rules become final to fill out their coverage areas by placing transmitters on land. The Commission should accept Phase II applications for channel block A in the Eastern Coastal Zone at the end of PetroCom's additional 3-year build-out period.

As supported by an economic study submitted with these comments, the Commission should wait 5-7 years before licensing additional wide area services in the Gulf of Mexico. The Commission should maintain its current rules for site-by-site licensing in the Specialized Mobile Radio (SMR) service, and should adopt PetroCom's proposed SMR interference standards.

Given the Commission's objective to permit land-based carriers to provide Coastal Zone service, the Commission should take this opportunity to adopt a rule that provides GMSA licensees with the same interconnection rights enjoyed by land-based carriers. To that end, the Commission should adopt a rule that provides that GMSA licensees are not to be deemed "interexchange" carriers for the purpose of interconnection with local exchange carriers. In addition, the Commission should find that the current cellular emergency calling service in the Gulf meets the requirements for E-911 service. As a final matter, the Commission should exempt PetroCom and other Gulf telecommunications providers from a requirement to contribute to the universal service fund.

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To: The Commission

COMMENTS OF PETROLEUM COMMUNICATIONS, INC.

Petroleum Communications, Inc. ("PetroCom"), by its attorneys, hereby submits its comments in the captioned proceeding in response to the Commission's Second Further Notice of Proposed Rulemaking, FCC 97-110, released on April 16, 1997 ["Second FNPRM"].

I. INTRODUCTION

1. PetroCom is one of two carriers licensed by the Commission to provide cellular radio telephone service in the Gulf of Mexico Service Area ("GMSA"), an area exceeding 86,000 square miles. For more than a decade since receiving its license, PetroCom has dedicated itself to constructing and operating an extensive network of cellular facilities from more than thirty-five water-based platforms in the Gulf. The majority of PetroCom's cellular subscribers are oil and gas companies. Other businesses, service companies, and pleasure boat operators who need continuous cellular service while traveling outside their home system in coastal waters

utilize PetroCom's system as "roamers." PetroCom's system provides virtually seamless coverage of the western coastline of the Gulf west from southern Texas to the border of Florida.

2. The Commission's Second FNPRM requested comments on the best method for defining the service areas of the two GMSA carriers ("Gulf carriers" or "GMSA licensees") and procedures for licensing "unserved" areas. The Commission also requested comment on whether it should license additional services on a geographic basis in the Gulf at this time. In general, PetroCom supports the Commission's GMSA licensing proposals with modifications. To ensure timely and consistent regulatory treatment regarding cellular operations in the GMSA, it is also appropriate for the Commission to use this proceeding to address other issues facing the Gulf carriers, namely interconnection, enhanced 911 ("E911") and universal service.

II. Cellular Licensing Rules For The GMSA

A. Gulf Carrier's Existing Licensing Rights

3. Any new rules the Commission adopts for cellular licensing in the GMSA must accommodate the Gulf carriers' existing licensing rights. On May 13, 1994, the United States Court of Appeals for the District of Columbia Circuit ordered the Commission to vacate Section 22.903(a) (now 22.911(a)) of its rules as applied to the Gulf carriers. Those rules define cellular CGSA boundaries as coterminous with the actual service area boundaries ("SABs") and provide that areas left unserved five years after the grant of the

licensee's original authorization become "unserved" areas subject to competing applications.¹ The court stated it was unfair to apply such a rigid CGSA definition to Gulf carriers because the frequent repositioning of the oil platforms could cause a Gulf Carrier to "effectively lose the ability to serve part or all of [its] service area."² In light of the court's order, a Gulf carrier's authorized CGSA is that which was authorized prior to January 11, 1993.³

4. When PetroCom received its license for the Gulf of Mexico Service Area ("GMSA") on August 14, 1985, PetroCom's CGSA was defined as the western half of the Gulf of Mexico. Gulf carriers were not required at that time to provide actual coverage (based on 39 dBu contours) to 75% of the area of its CGSA.⁴ In accordance with the rules in effect at the time, PetroCom exercised its right to file an application to expand its CGSA within five years from the date of its original authorization.⁵ On August 13, 1990,

¹ 47 C.F.R. §§ 22.911(a), 22.947.

² Petroleum Communications, 22 F.3d at 1173 (D.C. Cir. 1993).

³ 47 C.F.R. § 22.911(a).

⁴ Second FNPRM at n. 28.

⁵ 47 C.F.R. § 22.31(a)(1)(i)(1990).

PetroCom timely filed its application to expand its CGSA to include the entire GMSA, and that application is not subject to competing applications.⁶ PetroCom's application, dismissed by the Commission in the Third Report and Order ("3rd R&O"), was reinstated when the court vacated that order.⁷

5. PetroCom's CGSA extension application is still pending nearly seven years after it was filed, and three years since the court's order requiring reinstatement of the application.⁸ The Commission's Second FNPRM proposes to adopt new rules redefining the GMSA into a Coastal Zone and Exclusive Zone, redefining PetroCom's CGSA in the Coastal Zone in terms of its actual SABs, and proceeding to accept Phase II unserved area applications for the Coastal Zone. Presumably, the Commission believes that these new rules will apply retroactively so that PetroCom's CGSA extension application, in effect, will be subject to competitive bidding procedures. However, as shown below, PetroCom's CGSA extension application must be processed and granted under rules existing at the time of filing.

6. First, when it comes to applications in the cellular

⁶ Id.; see also Second Report and Order, CC Docket 85-388, 2 FCC Rcd. 2306, 2308 (1987), modified, Order on Reconsideration of Second Report and Order, CC Docket 85-388, 4 FCC Rcd. 5377, 5380 (1989); Rules for Rural Cellular Service (Fifth Report and Order) CC Docket 85-388, 3 FCC Rcd. 6401, ¶ 6 (1988).

⁷ Second FNPRM at nn. 30 & 51, and para. 26.

⁸ Second FNPRM at paras. 13 & 26.

service, Congress' auction legislation applies only to mutually exclusive applications for initial licenses or construction permits. PetroCom's application is to modify an existing authorization and is not mutually exclusive with any other application. Further, due to the limited competitive bidding authority contained in the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act"), the Commission cannot apply competitive bidding rules to applications for unserved areas filed before July 26, 1993.⁹ PetroCom's application: (i) was timely filed on August 13, 1990, (ii) is for a modification of an existing authorization; and (iii) is not mutually exclusive with any other applications. Thus, if the Commission dismisses PetroCom's pending application (in whole or in part) and forces PetroCom to refile under competitive bidding rules, the Commission will have violated the Budget Act by applying auction rules to an application filed prior to July 26, 1993.¹⁰ PetroCom's existing application therefore

⁹ Omnibus Budget Reconciliation Act of 1993, P.L. No. 103-66, §6002(b), 107 Stat 312, 392 (1993) (codified at 47 U.S.C. §§309(i) and 332); In re Amendment of Part 22 of the Commission's Rules to provide for the filing and processing of applications for unserved areas in the Cellular Service and to modify other cellular rules, CC Docket 90-6, Ninth Report and Order, 4 Communications Reg. (P & F) 1373, 1377, ¶ 2 (1996).

¹⁰ The rules in effect at the time provided clear notice to PetroCom of its right to file its CGSA extension application. For the Commission now to dismiss PetroCom's application in whole or in part would, in effect, treat that application as a prematurely filed unserved area application, an approach contrary to the court's holdings in McElroy Electronics Corp. v. FCC, 990 F.2d 1351 (D.C. Cir. 1993).

cannot be subjected directly or indirectly to competitive bidding procedures.¹¹

7. Second, the Commission must treat similarly situated parties alike or provide adequate justification for its disparate treatment.¹² Here, PetroCom's competitor, RVC Services, Inc., filed a similar application on January 8, 1990, which the Commission granted on May 17, 1990. There is no justification for not affording the same treatment to PetroCom's application, which was properly and timely filed. Under the rules in effect at the time, PetroCom's CGSA extension application must be granted.¹³

8. Third, Section 551(4) of the Administrative Procedure Act ("APA") does not permit the Commission to retroactively apply a new rule which has been adopted in a notice and comment rulemaking proceeding.¹⁴ PetroCom filed an application under "an admittedly

¹¹ See H.R. Rep. No. 103-11, at 253; cf. Maxcell Telecom Plus, Inc. v. FCC, 815 F.2d 1551 (D.C. Cir. 1987).

¹² New Orleans Channel 20, Inc. v. FCC, 830 F.2d 361, 366 (D.C. Cir. 1987); Public Media Center v. FCC, 587 F.2d 1322, 1331 (D.C. Cir. 1978); Melody Music, Inc. v. FCC, 345 F.2d 730, 733 (D.C. Cir. 1965).

¹³ 47 C.F.R. § 22.31(a)(1)(i) (1990).

¹⁴ 5 U.S.C. § 551(4) (1997); Georgetown University Hosp. V. Bowen, 821 F.2d 750, 756-57 (D.C. Cir. 1987); Retail, Wholesale and Dep't Store Union v. NLRB, 466 F.2d 380, 388 (D.C. Cir. 1972); see also Green v. United States, 376 U.S. 149 (1964) (stating that individual's timely filed application for benefits must be processed under rules existing at the time); cf. Yakima Valley Cablevision, Inc. v. FCC, 794 F.2d 737, 746 (D.C. Cir. 1986) (noting that different factors apply when determining whether agency may give retroactive effect to a new policy developed during an adjudication).

lawful regulation"¹⁵ and planned its activities accordingly.¹⁶ If the Commission determines PetroCom's application based on the outcome of the present rulemaking proceeding, then the Commission will have retroactively applied the proposed rule in violation of Section 551(4) of the APA.¹⁷

9. Accordingly, in order to accommodate PetroCom's CGSA extension application rights, the Commission's proposed Coastal Zone should be divided into an eastern half and a western half. The "Western Coastal Zone" denotes the area defined by a uniform boundary of 12 nautical miles from the Coast Line (as defined by a specific set of coordinates) extending from the southernmost part of Texas to the border of Alabama and Florida. Similarly, "Eastern Coastal Zone" denotes the area defined by a uniform boundary of 12 nautical miles from the Coast Line extending east from the border of Alabama and Florida to the southernmost part of Florida. The "Exclusive Zone" denotes the area beyond the boundaries of the Coastal Zones to the limits of the U.S. Exclusive Economic Zone proclaimed in 1983.¹⁸

¹⁵ 47 C.F.R. § 22.31(a)(1)(i)(1990).

¹⁶ See Yakima Valley, 794 F.2d at 745-46.

¹⁷ Georgetown University, 821 F.2d at 756-58; Yakima Valley, 794 F.2d at 745, 46. Given APA requirements, there is no justification for placing PetroCom's application on hold pending the outcome of the rulemaking proceeding.

¹⁸ See Attachment A for the proposed rule Section 22.99 that defines the GMSA.

10. Upon adoption of the new rules, PetroCom's CGSA would include those portions of the Western Coastal Zone and Exclusive Zone covered by its composite SABs. To accommodate the grant of PetroCom's CGSA extension application, PetroCom would have, from the grant date of that application, an additional, exclusive 3-year build-out period in the Eastern Coastal Zone, approximately the period of time which has passed from the court's remand. At the expiration of the 3-year period, PetroCom's CGSA in the Eastern Coastal Zone would be defined by its SABs, and any unserved area in the Eastern Coastal Zone would be available for Phase II licensing. Carriers could continue to operate in the Eastern Coastal Zone on an interim or secondary basis until such time as PetroCom provides service during the 3-year period following grant of its CGSA extension application.¹⁹

11. As the court recognized, oil platforms on which Gulf carriers locate transmitters are temporary and subject to periodic moves, requiring the Commission to take a more flexible approach in defining the boundary of a Gulf carrier's CGSA.²⁰ There is no reason why this flexibility requirement should not apply to a Gulf carrier's CGSA in the Coastal Zones. Thus, a Gulf carrier should

¹⁹ See proposed rule Sections 22.912(a) and 22.948 in Attachment A.

²⁰ The determination of Coastal Zone boundaries should be based solely on technical factors of the kind discussed in the court's decision. It is not appropriate for the Commission to engage in an indirect form of price regulation by considering carriers' service fee structure for determining the boundary.

retain rights to recover areas initially served as part of its CGSA but later vacated due to changed conditions.²¹ Further, in PetroCom's case, once its additional 3-year build-out period expired for the Eastern Coastal Zone, PetroCom would retain the same recovery rights in that Zone. Operations by another cellular carrier in these areas would be on a secondary basis, meaning that if a Gulf carrier later resumes service in that area, the other carrier would have to pull back or remove its transmitter entirely. The Gulf carriers would always retain exclusive rights in the Exclusive Zone, and not be subject to competing applications.

B. Treatment of Incumbents

12. To be meaningful, the rule that affords Gulf carriers protection based on the formula for calculating the CGSA shown in Section 22.911(a)(2) of the Commission's Rules [the "GMSA formula"] must also apply to land-based incumbents operating near the Gulf. Otherwise, if the service area contours of land-based incumbents are determined by the usual 32 dBu criteria of Section 22.911(a)(1), and such contours run adjacent to a Gulf carrier's GMSA formula contour, the land carrier's signal strength advantage will capture traffic several miles inside the Gulf carrier's contour, rendering the GMSA formula protection worthless. Indeed, a review of Commission records reveals that land-based incumbents

²¹ In fact, PetroCom has, when possible, relocated cell sites to another platform to reestablish coverage in an area vacated as a result of the movement of a platform.

bordering the GMSA have relied upon alternative propagation showings to obtain protection for service areas that approximate those that would be derived from the GMSA formula. It is simply not fair to allow land-based incumbents to extend such service areas into the GMSA and a Gulf carrier's CGSA.

13. Accordingly, PetroCom suggests the following hybrid approach for land-based MSA and RSA licensees that border the GMSA. For any cell site within 35 miles of the GMSA Coast Line, each land-based carrier would analyze its SABs along the eight cardinal radials based on the GMSA formula.²² For that portion of the SAB so calculated that does not extend into the GMSA, the SAB could be recalculated using the Section 22.911(a)(1) formula.²³ Thus, if the GMSA formula contour of a land-based incumbent extends into a CGSA of another carrier located in the GMSA, the land-based incumbent would be required to pull back the contour absent the other carrier's consent. Carriers that believe terrain factors would prevent a GMSA formula contour from intruding into another carrier's CGSA in the GMSA can be permitted to make an engineering showing in support of allowing such facilities. Under this proposal, land-based carriers would continue to use the SAB formula

²² The fact that incumbent land-based carriers bordering the GMSA already use alternative propagation showings that approximate the results of the GMSA formula supports requiring them to use that formula in calculating their service area boundaries.

²³ See proposed rule Section 22.911(a)(3) in Attachment A.

contained in Section 22.911(a)(1) in dealing with other adjacent land-based licensees.

14. Existing de minimis extensions in the Eastern Coastal Zone, based on a GMSA formula contour, that do not intrude into another carrier's CGSA would become permanent upon expiration of the applicable five-year fill-in period. During PetroCom's extended 3-year build-out period in the Eastern Coastal Zone, future de minimis extensions would be permitted as long as they do not intrude into any of PetroCom's GMSA formula contours. Non de-minimis extensions into the Eastern Coastal Zone would be permitted: (i) only with PetroCom's consent; or (ii) on a secondary basis, meaning that the carrier would have to pull back if PetroCom deploys facilities during the three-year fill-in period. Further, the definition of SAB extensions should be modified to include those that cross the boundary between the Eastern Coastal Zone and Eastern Exclusive Zone.

C. Placement of Transmitters

15. PetroCom agrees that the Commission's Gulf licensing rules should help ensure uninterrupted service along the Gulf coast which already exists now. As the Commission itself recognized "[s]ince 1986, cellular service in the Gulf region has matured, and RSA licensees have built out their systems to such an extent that nearly the entire coastal area of the Gulf region is within the

CGSA of land-based carriers."²⁴ Further, PetroCom has continued to add cell sites along the coastline of the Gulf and has worked with land based carriers to enter into collocation agreements to improve seamless coverage. In this regard, PetroCom in its 15-year experience in the cellular industry is not aware of any significant number of customer complaints concerning the reliability of service received by customers of land-based systems in the Gulf region. It is therefore more appropriate for the Commission to focus attention on rules that allow land-based and Gulf carriers to freely place transmitters to serve Coastal Zones from land and/or water sites in a manner that accommodates their respective business concerns, rather than attempting to carve out and auction unserved areas that do not exist.

16. PetroCom thus agrees that the Commission should change its rules to permit the Gulf carriers to install land-based transmitters to serve Coastal Zones. However, given the unique engineering challenges involved, the new rules should not simply extend the Commission's existing SAB rules to the GMSA. Instead, the new rules should be tailored to permit Gulf and land-based carriers to provide service from either land-based or water-based sites. Gulf carriers, for instance, should be permitted to install land-based transmitters to serve the GMSA Coastal Zone under the following conditions: (i) the signal strength of the GMSA

²⁴ Second FNPRM, ¶40.

licensee's transmitter over served area (as opposed to unserved area) of the incumbent land-based carrier up to the GMSA Coast Line (as defined in §22.99) must at all times be adjusted such that the GMSA licensee's proposed system does not capture any roaming or subscriber traffic of the incumbent land-based carrier; and (ii) upon reasonable written request of the incumbent land-based carrier, the GMSA licensee must make actual measurements and adjustments in order to demonstrate compliance with the signal strength requirement above and provide such a demonstration in writing to the incumbent carrier no later than 60 days after the request is made.

17. Similarly, land-based carriers should be permitted to install water-based transmitters to serve Coastal Zones under the following conditions: (i) the signal strength of the land carrier's water-based transmitter over served area (as opposed to unserved area) of the incumbent GMSA licensee must at all times be adjusted such that the land carrier's system does not capture roaming or subscriber traffic of the incumbent GMSA licensee; and (ii) upon reasonable written request of the incumbent GMSA licensee, the land-based carrier must make actual measurements and adjustments in order to demonstrate compliance with the signal strength requirement above and provide such a demonstration in writing to the incumbent GMSA licensee no later than 60 days after

the request is made.²⁵

D. Phase II Application Processing

18. The Gulf Carriers have been requesting authority from the Commission to place transmitters on land ever since they received their licenses.²⁶ Without such authority, there are certain areas along the Gulf Coast which the Gulf Carriers have been unable to serve, which areas would become subject to Phase II applications. The Commission now proposes to provide Gulf carriers with authority to place transmitters on land while at the same time permitting Phase II applications to be filed for unserved areas. To remedy the inherent unfairness in this plan, PetroCom proposes that the Gulf carriers have 18 months from the date the new rules become final to fill out their coverage by placing transmitters on land. After this 18-month period has expired, the Commission could start accepting Phase II applications.

19. Based on the foregoing, the Commission would not immediately accept any Phase II applications, but could process applications in accordance with de minimis and secondary operation

²⁵ During the pendency of this rulemaking, the Commission should process requests for Special Temporary Authority to permit a Gulf carrier to co-locate land-based facilities with the agreement of the land-based carrier. Granting such STAs would expand and improve service to the public while the Commission takes the time to finalize new licensing rules in this very complex proceeding.

²⁶ See Second FNPRM at ¶ 8. The absence of such authority has permitted land-based carriers to stonewall PetroCom in response to its good faith efforts to reach accommodations that would permit it to serve the GMSA with land-based facilities.

rules. After the new rules have been in place for 18 months, the Commission could start accepting Phase II applications for the Western Coastal Zone. At the end of PetroCom's additional 3-year build-out period for the Eastern Coastal Zone, the Commission could accept Phase II applications for the Eastern Coastal Zone in two steps. First, the Commission would redefine the CGSA of PetroCom as its SABs based on the GMSA formula, including grandfathering any de minimis extensions into adjacent markets. The CGSAs of land-based carriers would be redefined to grandfather any de minimis extension of GMSA formula contours into the Eastern Coastal Zone that do not overlap PetroCom's redefined CGSA. The Commission would require all such carriers to submit System Information Updates (SIUs) depicting the newly defined CGSAs. Second, after the CGSAs have been redefined and SIUs have been filed, the Commission could accept Phase II applications for the Eastern Coastal Zone. New Phase II licensees should be given one year to construct systems.

E. Pending Applications

20. As explained above, PetroCom's CGSA extension application should be granted and PetroCom afforded an additional 3-year build-out period in the Eastern Coastal Zone. PetroCom agrees that all pending Phase II applications should be dismissed. Any other filed application can be processed according to the de minimis extension and secondary service rules described above.

III. Other Commercial Mobile Radio Services in the Gulf of Mexico

21. In seeking comment on whether other commercial mobile radio services should be licensed in the Gulf of Mexico at this time, the Commission specifically asked for comment regarding whether demand for wireless services in the GMSA is or will be sufficient to justify granting additional licenses to serve the area.²⁷ In order to evaluate this issue, PetroCom commissioned a report ("Darby Report") by Larry F. Darby, of Darby Associates.²⁸ Mr. Darby is a well known economist with a background in telecommunications. The Darby Report concludes "that currently licensed and duly authorized capacity, including incumbent suppliers in the GMSA and firms that are licensed to provide service there, is likely to be sufficient to meet reasonably anticipated growth in demand at rates and with service quality dimensions that reflect an effectively competitive marketplace."²⁹

22. The Darby Report analyzes competition in the Gulf wireless telecommunications market using an accepted economic framework known as structure-conduct-performance ("SCP"). Using the SCP framework, the Darby Report finds "no clear basis, in either economic theory or in the facts available to us at this time, for concluding that an increase in the number of wireless

²⁷ Second FNPRM, at ¶¶ 60 and 63.

²⁸ The Darby Report is provided in Attachment B hereto.

²⁹ Darby Report at p. 2.

licenses and potential entrants will lead to substantial improvement in market performance and user welfare among wireless telecommunications services users in the GMSA."³⁰

23. Even after reaching the conclusions that (1) supply is likely sufficient to meet demand and (2) increasing supply will not necessarily improve market performance, some parties may still call for increased supply of telecommunications services in the Gulf, arguing that such measures would cause no harm. The Darby Report considers that argument and tests it against the economics literature on the subject concluding that (1) the economics literature supports the proposition that increasing potential entry may reduce economic welfare and (2) licensing new wireless carriers in the Gulf will increase uncertainty for incumbent licensees about future market conditions, thereby increasing market risk.³¹ Therefore, "there is some risk that granting additional licenses to serve the market will actually reduce the expected economic performance of the wireless market in the GMSA."³² Accordingly, the Commission should refrain from licensing new wireless spectrum in the Gulf for a period of 5-7 years, at which time the issue should be revisited.

³⁰ Darby Report at p. 3.

³¹ Darby Report at pp. 16-19.

³² Darby Report at p. 3.

A. Personal Communications Services

24. As the Darby Report suggests, sufficient demand likely does not exist to justify geographic licensing of broadband and narrowband PCS services into the Gulf of Mexico. Indeed, such licensing may do more harm than good.³³ A much better approach would be for the Commission to permit land-based PCS carriers to serve the coastal areas of the Gulf.³⁴ Accordingly, the Commission should not expend resources at this time to define potential service areas, coverage requirements, interference standards. The Commission should wait at least 5-7 years before revisiting such issues.

B. Specialized Mobile Radio

25. The FCC should not extend geographic area licensing of 800 MHz and 900 MHz SMR to the Gulf of Mexico. The economics of wireless services in the Gulf of Mexico do not warrant geographic area licensing.³⁵ Accordingly, formulating rules for SMR wide area licensing in the Gulf would be a tremendous waste of time and resources. The Commission can maintain the SMR application freeze while entertaining waiver requests for sites in the Gulf of Mexico based on a showing of need. The Commission should also adopt

³³ See Darby Report at p. 3.

³⁴ This approach was taken in Mobil Oil Telecom, Ltd., 11 FCC Rcd 4115, 4116, n. 10 (WTB 1996).

³⁵ See Darby Report at pp. 2-3.

PetroCom's proposed interference standards to protect Gulf SMR operators against interference.³⁶

C. Other Services

26. The FCC should not license any other wide area services in the Gulf of Mexico.³⁷ It can revisit this issue in 7 years.

IV. Equal Interconnection Rights For Cellular Carriers Serving the GMSA

27. One of the Commission's goals in this proceeding is to facilitate the provision of reliable cellular service by both land-based carriers and the Gulf carriers to users traveling within Coastal Zones.³⁸ To achieve this goal, the new rules must be even-handed and provide no unfair advantage to either type of carrier. Accordingly, it is appropriate for the new rules to explicitly entitle Gulf carriers to the same rights of interconnection with incumbent LECs as land-based cellular carriers currently possess. Thus, if a land-based cellular carrier serving a Coastal Zone receives Type 1 cellular interconnection from the incumbent LEC, a Gulf carrier should be entitled to that type of interconnection as well. Incumbent LECs should not be afforded the opportunity -- arising from ambiguous Commission rules and pronouncements -- to assert that a Gulf carrier is an "interexchange" carrier and

³⁶ A copy of PetroCom's petition for rulemaking is provided in Attachment C hereto.

³⁷ See Darby Report at pp. 2-3.

³⁸ Second FNPRM, ¶127.

subject to a different interconnection arrangement which may involve access charges. In this regard, the Commission has consistently stated that cellular carriers are not "interexchange" carriers for the purposes of interconnection.³⁹ The Commission should, therefore, adopt a rule which specifically extends equal interconnection rights to Gulf carriers by stating that they are not deemed to be "interexchange" carriers for the purpose of interconnection with LECs.⁴⁰ Absent such a definitive rule, the Gulf carriers will be placed at an unfair disadvantage vis-a-vis land-based cellular carriers, thus frustrating the Commission's goal of facilitating the provision of reliable service in Coastal Zones by both types of carriers.⁴¹

³⁹ See MTS/WATS Market Structure, 97 FCC 2d 834, 881-83 (1984) (cellular carriers deemed not to be interexchange carriers subject to access charges); Cellular Interconnection Proceeding, 2 FCC Rcd 2910, 2916 (1987) (cellular carriers generally excluded from access charge liability); see also 47 C.F.R. § 51.701(b)(2) (defining carrier traffic as local, not interstate in nature).

⁴⁰ The Commission recently affirmed that incumbent LECs must make interconnection available to Commercial Mobile Radio Service ("CMRS") providers, including cellular carriers, in conformity with the terms of sections 251 and 252 of the Telecommunications Act of 1996 ("1996 Act"), including offering rates, terms, and conditions that are just, reasonable and nondiscriminatory. See In the Matter of Implementation of Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98 & 95-185, First Report and Order, at ¶ 1012. Further, nothing in the 1996 Act states that CMRS providers can or should be deemed to be "interexchange" carriers. Indeed, the Commission has recognized that state attempts to define CMRS providers as interexchange carriers may constitute an unlawful entry barrier in violation of 47 U.S.C. § 332(c)(3). Id. at ¶ 1026, n. 2433.

⁴¹ See proposed rule Sections 20.11(d) in Attachment A.

V. Provision of E-911 services in the Gulf of Mexico.

28. The goal of PetroCom's E-911 service in the Gulf of Mexico is to provide wireless customers with access to the advanced emergency capabilities of E-911. However, it is important to take into account the unique aspects of cellular service in the Gulf. Unlike land-based cellular systems, cellular operations in the Gulf cover a small population over a very large expanse of territory. For example, PetroCom's cellular coverage is over an area in excess of 86,000 square miles. Further, in serving the coastline of the Gulf, PetroCom must deal with the jurisdictions of five states and numerous counties and cities.

29. The PetroCom system is designed for three watt coverage. There are 25 cell sites, 10 cell extenders placed an average of 40 miles apart, which provide "skinny" route services with some gaps where there is no coverage (due to location of platforms). Surveys may indicate that a majority of wireless customers on land purchase a cellular phone for safety and security reasons, but this is not the case with PetroCom's wireless customers. The majority of PetroCom's customers operate from fixed locations on oil platforms. Unlike the typical land based wireless customer, a wireless customer on an oil platform has other emergency and safety systems on which to rely, including company microwave systems, private radio systems, UHF/VHF and single side band systems. In addition, all oil production and service companies have emergency operating